

# **Exhibit**

# **5**

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 (pro hac vice pending)

*Proposed Attorneys for Dennis J. Connolly in His Capacity  
 as Chapter 11 Trustee for SONICblue Incorporated, et al.*

**UNITED STATES BANKRUPTCY COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION**

In re:	) Chapter 11 Cases
	)
SONICBLUE INCORPORATED, a	) Case Nos.: 03-51775
Delaware corporation, DIAMOND	) through 03-51778
MULTIMEDIA SYSTEMS, INC., a	)
Delaware corporation, REPLAYTV,	) Jointly Administered
INC., a Delaware corporation, and	)
SENSORY SCIENCE CORPORATION,	) <b>APPLICATION FOR AN ORDER</b>
a Delaware corporation,	) <b>PURSUANT TO SECTION 327(a)</b>
	) <b>OF THE BANKRUPTCY CODE</b>
Debtors and Debtors-in-Possession.	) <b>AUTHORIZING THE RETENTION</b>
	) <b>OF ALSTON &amp; BIRD LLP AS</b>
	) <b>COUNSEL TO DENNIS J. CONNOLLY</b>
	) <b>THE CHAPTER 11 TRUSTEE</b>
	)
	) Date:
	) Time:
	) Place: 280 South First Street
	) San Jose, CA 95113
	) Judge: Hon. Marilyn Morgan

Application for an Order Pursuant to Section 327(a)  
 of the Bankruptcy Code Authorizing the Retention of  
 Alston & Bird LLP As Counsel to Dennis J. Connolly,  
 Chapter 11 Trustee (Case No. 03-51775)

1  
2 I, Dennis J. Connolly, the duly appointed Chapter 11 Trustee (the "Trustee") in  
3 the above-captioned bankruptcy case for SONICblue Incorporated and its three operating  
4 subsidiaries, Diamond Multimedia Systems, Inc., ReplayTV, Inc. and Sensory Science  
5 Corporation (collectively, the "Debtors"), hereby apply (the "Application") to this Court  
6 for entry of an Order pursuant to 11 U.S.C. § 327(a) authorizing the retention and  
7 employment of Alston & Bird LLP ("A&B") as counsel to the Trustee in these cases. In  
8 support of this Application, the Trustee represents as follows:  
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10

11 **BACKGROUND**

12 1. On March 21, 2003 (the "Petition Date"), the Debtors filed with this Court  
13 their voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code,  
14 11 U.S.C. §§ 101 et seq., as amended (the "Bankruptcy Code").  
15

16 2. On April 17, 2007, this Court entered the Order Approving Appointment  
17 of Chapter 11 Trustee wherein the Court approved the appointment of the Trustee  
18 pursuant to Section 1104 of the Bankruptcy Code.  
19

20 3. This Court has jurisdiction over this case and this Application pursuant to  
21 28 U.S.C. §§ 1334 and 157. Pursuant to 28 U.S.C. § 157(b)(2)(A), this is a core matter.  
22 Venue of this case and of this Application is proper pursuant to 28 U.S.C. §§ 1408 and  
23 1409. The statutory predicates for the relief sought in this Application are Section 327(a)  
24 of the Bankruptcy Code and Rule 2014 of the Federal Rules of Bankruptcy Procedure  
25 (the "Bankruptcy Rules").  
26  
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**RELIEF REQUESTED**

4. In order to assist him in the administration of these cases, the Trustee seeks to employ the law firm of A&B, a firm at which the Trustee is a Partner, as his principal counsel pursuant to Section 327(a) of the Bankruptcy Code. The Trustee respectfully represents that there is cause for him to retain A&B and that A&B's retention is in the best interests of these bankruptcy estates.

5. This is a very complex case from the perspective of the issues that remain. Based on a review of the March 26, 2007 Order entered in these cases, those issues appear primarily to be to complete an investigation of the facts and issues surrounding the disqualification of counsel for the Debtors and debtors in possession, and to make decisions and take actions based on that investigation. The Court's direction that the Trustee in this case be selected from a nationwide search to ensure that the Trustee be a "strong trustee with the appropriate qualifications and without connections to this case and this legal community" applies equally to the selection of counsel for the Trustee. The Trustee understands that there are numerous issues relating to the relationship between the counsel for the Debtors (as its general corporate counsel for approximately 15 years before the filing of the bankruptcy) and the Debtors that must be explored and reviewed in the context of any analysis of the conduct of Debtors' counsel.

6. The second area of primary focus in this case is the intertwined question of claims allowance, distributions to creditors, and plan confirmation. Equally significant, if not as sensitive, legal issues will be presented by these questions and they also require counsel to work with the Trustee in making decisions and working between

1 and among the parties to reach a consensual resolution, or to execute litigation. Among  
2 other things, the Trustee understands that issues of subordination and the allowance of the  
3 Senior Note Holders' claims will be at issue in the cases. This subordination impacts not  
4 only the apparent dispute relative to the Via claim and whether that claim is or would  
5 have been subject to the characterization as "Senior Indebtedness" under the Senior Note  
6 Indenture, but also the relationship to the Junior Note Indenture and the allocation of the  
7 value of the estate to various creditor constituencies.<sup>1</sup>  
8  
9

10 7. A&B is a substantial law firm, with more than 750 attorneys – of whom  
11 approximately 450 are based in Atlanta. Of these lawyers I have selected three in  
12 particular to lead the work to be performed in these cases based on their experience and  
13 judgment. Those three lawyers are Neal Batson, Steve Collins, and Grant Stein.  
14

15 8. Mr. Batson is a senior bankruptcy lawyer and is Special Counsel to A&B  
16 who has been identified as an *Elder Statesman* by a leading reviewer of lawyers  
17 internationally. Among other things Mr. Batson has served as the Examiner in both the  
18 Enron and Southmark bankruptcy cases. It is anticipated that he will be involved in  
19 providing strategy recommendations and assisting in potential settlement negotiations of  
20 the complex and difficult issues in this case at such time as those may arise.  
21

22 9. Mr. Collins serves as the Ethics Partner at A&B. He is also very familiar  
23 with the intricacies of Section 327 disinterestedness and generally with the related issues  
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25 <sup>1</sup> Any defined terms used herein shall have the meaning ascribed to them in the  
26 Disclosure Statement Describing First Amended Liquidating Plan of  
27 Reorganization as of January 18, 2007 Proposed Jointly by Debtors and Creditors'  
28 Committee (Docket No. 2101) (the "Disclosure Statement").

1 that arise in the area. Mr. Collins served as one of the senior lawyers on the Enron  
2 engagement, and Mr. Collins is very familiar with the issue of disclosure under the  
3 Bankruptcy Code and Rules. He also has pursued numerous investigations in various  
4 areas of the law for clients and it is anticipated that he will take the lead in dealing with  
5 the ethical issues in this case.  
6

7 10. Mr. Stein is the most recent former head of A&B's bankruptcy practice  
8 group and is very familiar with the complexities and practicalities of the legal issues that  
9 arise with claims resolution, distributions, plan confirmation and negotiations, and ethical  
10 issues faced by lawyers generally, and bankruptcy lawyers specifically including fee  
11 disgorgement questions. He will be involved in all of these areas in this case.  
12

13 11. Because of the extreme importance of the issues in this case, the analysis  
14 needed, and their resolution, the ability I have to work with lawyers whom I have known  
15 for twenty years and in whose independent judgment and analytical ability I have full and  
16 complete confidence is essential to the expeditious and appropriate resolution of the very  
17 significant issues in this case. It is respectfully submitted that in this unusual setting,  
18 alternative counsel would not be best suited to assist the Trustee in completing his job.  
19  
20

21 12. A&B has agreed to serve as counsel to the Trustee and, subject to approval  
22 by the Bankruptcy Court, the Trustee has agreed to pay A&B its standard hourly rates,  
23 and other charges such as expense reimbursements, photocopy services and the like, as  
24 limited by and consistent with B.L.R. 9029-1, Guidelines 19-24, and 27-40, all being  
25 subject to approval by the Bankruptcy Court, on notice as provided in the Bankruptcy  
26 Code. The principal attorneys and paralegals presently designated to represent the  
27  
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Trustee in these cases and their standard hourly rates are set forth below:

Neal Batson	\$750
Steven M. Collins	\$660
Grant T. Stein	\$625
Jennifer M. Meyerowitz	\$430
Sean Hyatt	\$335
Wendy R. Reiss	\$320
David Wender	\$320
Will Sugden	\$320
Tedra Ellison	\$160

Other attorneys and paralegals may from time to time perform services for the Trustee in connection with the matters described herein. The hourly rates set forth above are subject to periodic adjustments to reflect economic and other conditions, including increased experience of the professionals rendering services. The hourly rates for the other professionals not identified in this Application will be within the ranges of the rates noted above.

13. Further, the Trustee understands that it is A&B's policy to charge its clients in all areas of practice for all other expenses incurred in connection with the clients' cases. The expenses charged to clients include, among other things, long distance telephone charges, telecopier charges, mail and express mail charges, special or hand delivery charges, document processing, photocopying charges, computerized research, and transcription costs, as well as allowable nonordinary overhead expenses. The Trustee understands that A&B will charge for these expenses in a manner and at rates consistent with charges made generally to A&B's other clients, as limited by and consistent with B.L.R. 9029-1, Guidelines 19-24, and 27-40. With respect to travel time for which an A&B attorney is not actually working on this file, A&B will not bill for such time in

1 accordance with B.L.R. 9029-1, Guideline 17.

2           14. The Trustee has been advised that each of the attorneys listed above that  
3 will appear before this Court are admitted to practice before the courts of the State of  
4 Georgia and the United States District Court for the Northern District of Georgia.  
5 Further, certain of these attorneys are admitted to practice before other courts as well,  
6 including the United States Court of Appeals for the Eleventh Circuit and the United  
7 States Supreme Court. The attorneys have knowledge and experience of bankruptcy  
8 practice and are well qualified to represent the Trustee.  
9  
10

11           15. In the performance of the Trustee's duties in these cases and any related  
12 proceedings in this Court and other courts, it will be necessary for various legal services  
13 to be rendered by A&B to the Trustee, among those services being:  
14

- 15           (a) assisting the Trustee in consultations, negotiations and all other dealings  
16 with creditors and other parties in interest concerning the administration of this  
17 case;  
18  
19           (b) preparing pleadings, conducting investigations and making court  
20 appearances incidental to the administration of the Debtors' estates;  
21  
22           (c) advising the Trustee of his rights, duties and obligations under the  
23 Bankruptcy Code, Bankruptcy Rules, Local Rules and Orders of this Court;  
24  
25           (d) advising and assisting the Trustee with respect to litigation;  
26  
27           (e) rendering other legal advice and performing all those legal services  
28 necessary and proper to the administration of the Debtors' estates during the  
pendency of these cases; and



1 (f) taking any and all necessary actions in the interest of the Trustee incident  
2 to the proper representation of the Debtors' bankruptcy estates in the  
3 administration of these cases.  
4

5 16. To the best of the Trustee's knowledge, understanding and belief, A&B  
6 does not hold any disqualifying interest to the Debtors, their directors, any significant  
7 creditors or any other significant parties in interest in matters upon which the law firm is  
8 to be engaged by the Trustee. As set forth in the Declaration of Dennis J. Connolly in  
9 Support of Appointment of Dennis J. Connolly as Chapter 11 Trustee for the Bankruptcy  
10 Estate of SONICblue Incorporated, et al. filed on April 17, 2007 (the "Connolly  
11 Declaration"), the First Supplement to the Declaration filed contemporaneously with this  
12 Application, and in the Declaration of Grant T. Stein (the "Stein Declaration") attached  
13 hereto, the Trustee submits that A&B and certain of its partners, counsel and associates  
14 represent creditors or equity security holders of the Debtors in connection with matters  
15 unrelated to the matters on which the Trustee seeks to employ A&B. The Trustee and  
16 A&B have examined A&B's books and records with respect to its connections to  
17 creditors and other parties in interest and is continuing to do so.  
18  
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20

21 17. A&B utilizes a number of procedures (the "Firm Procedures") to  
22 determine its relationships, if any, to parties that may have connections to a debtor. A&B  
23 maintains records of all of its clients, the matters on which it represents its clients, and the  
24 other parties which have a substantial role in such matters. In addition, A&B has  
25 inquired of its attorneys whether they have any independent (i.e., non-A&B) relationships  
26 with the Debtors, their directors, any of their significant creditors, and any other  
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1 significant parties in interest. A&B has utilized the conflicts system and the Firm  
2 Procedures to determine any relationships with the referenced persons and entities.

3  
4 18. In implementing the Firm Procedures with respect to A&B's  
5 representation of the Trustee in these cases, A&B took the following actions to identify  
6 parties that may have connections to the Debtors and to identify A&B's relationships  
7 with such parties:

8 (a) A&B compiled, from information provided by the United States Trustee  
9 and/or publicly available information, a list of interested parties and creditors (the  
10 "Interested Parties"), attached to the Connolly Declaration and the Stein  
11 Declaration as Schedule 1. The Interested Parties include the Debtors and their  
12 non-debtor subsidiaries and affiliates, creditors and certain parties in interest,  
13 including professionals identified by the Office of the United States Trustee,  
14 creditors and parties in interest shown on Exhibit "C" to the First Amended  
15 Disclosure Statement filed by the Debtors and the Official Committee of  
16 Unsecured Creditors (the "Committee"), and other parties in interest identified in  
17 that certain Memorandum Opinion dated March 26, 2007.

18  
19 (b) A&B then caused the employees of A&B to compare each of the names  
20 on the Interested Parties list to the names in its master electronic database of  
21 current and former clients (the "Conflicts Database"). The Conflicts Database  
22 generally includes the name of each client of the firm, the name of each party who  
23 is or was known to be adverse to such client of the firm, the name of each party  
24 that has or had a substantial role with regard to the subject matter of A&B's  
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1 retention, and the names of the A&B attorneys who are or were primarily  
2 responsible for matters for such clients. A&B also sent an email inquiry to A&B  
3 attorneys inquiring of any known connections between A&B and certain of the  
4 interested parties (including Debtor's primary bankruptcy counsel), the United  
5 States Trustee and attorneys with the Office of the United States Trustee in  
6 Region 17.  
7

8 (c) If an Interested Party produced a match with a known party in the  
9 Conflicts Database, A&B reviewed a report for that specific party to determine  
10 whether A&B: (i) had or have in the past or is currently representing the party  
11 and/or (ii) whether the matter is active or closed.  
12

13 19. Schedule 2 to the Connolly Declaration and attached Stein Declaration  
14 identifies those Interested Parties (or their affiliates) that A&B is representing. If  
15 attorneys at A&B are currently representing the Interested Party (or its affiliate), the  
16 A&B representation is identified on Schedule 2 as "Active."  
17

18 20. A&B has the following connections with matters wholly unrelated to the  
19 Debtors and these Chapter 11 cases:  
20

21 (a) A&B represents Matsushita Electric Industrial Co., Ltd. and Matsushita  
22 Electric Corporation of America in tax matters and certain intellectual property  
23 matters that are unrelated to the Debtors or their cases. While the Trustee  
24 understands that Matsushita Kotobuki Electronic Sales of America LLC and  
25 Matsushita Kotobuki Electronics Industries are creditors that presently sit on the  
26 Committee, A&B is informed that Matsushita Kotobuki Electric Sales and  
27  
28

1 Matsushita Kotobuki Electronics Industries are subsidiaries of Matsushita  
2 Electric Industrial Co., Limited. A&B is not aware of any challenge to the  
3 claims filed by the Matsushita entities.  
4

5 (b) A&B represents U.S. Bank, N.A. in financings unrelated to the Debtors or  
6 their cases. The Trustee understands that U.S. Bank, N.A. is the successor  
7 indenture trustee for the Junior Notes (as defined in the Disclosure Statement).  
8 U.S. Bank's legal fees to A&B in 2006 and 2007 were less than 1/10<sup>th</sup> of 1% of  
9 A&B's total collected legal fees for this period. A&B has a written conflict  
10 waiver from U.S. Bank that enables it to be fully adverse to U.S. Bank.  
11

12 (c) Two partners of A&B's Washington, D.C. and New York offices are  
13 formerly partners with the predecessor firm to Debtors' counsel. A&B has  
14 served as counsel to parties in litigation that may have interest coincident with  
15 parties represented by Pillsbury and A&B has been adverse to Pillsbury on other  
16 matters. Since 1991, either Pillsbury or certain of its predecessor firms  
17 (including the Shaw Pittman firm) has referred 12 matters to A&B. The fees for  
18 the matters aggregate approximately \$580,000 over the past 16 years, which is  
19 less than 2/100 of 1% of the total revenues for A&B over the past 16 years.  
20

21 (d) A&B represents Houlihan, Lokey, Howard & Zukin ("HLHZ") in  
22 connection with certain fairness opinions and related issues in respect of  
23 transactions and matters wholly unrelated to the Debtors or their cases. The  
24 Trustee understands that HLHZ is a financial advisor/investment banker to the  
25 Debtors although it appears that the engagement is largely at an end by virtue of  
26  
27  
28

1 the fact that the transactions for which HLHZ had been engaged have now  
2 closed.

3 (e) A&B represents the Coca-Cola Company on tax matters and property  
4 matters all in which are wholly unrelated to the Debtors or their cases.  
5

6 (f) A&B represents Wells Fargo, NA, and certain of its affiliates with respect  
7 to certain financial transactions (as an asset-based lender) in respect of  
8 transactions that are wholly unrelated to the Debtors or their cases.  
9

10 (g) A&B represents Intel Corporation on anti-trust and related matters all  
11 unrelated to the Debtors or their bankruptcy cases.

12 (h) Jasper Cummings, Of Counsel to A&B, was retained by Hennigan Bennett  
13 & Dorman on behalf of its client, Beecher, Ltd., in the Azabu Buildings  
14 Company, Ltd. Chapter 11 bankruptcy case pending in the District of Hawaii,  
15 Bankruptcy Case No. 05-50011, dealing with the Honolulu Hyatt Hotel. Mr.  
16 Cummings has prepared an expert report and is to be deposed and give trial  
17 testimony concerning a federal income tax issue under the Debtor's  
18 reorganization plan. The issue on which he is a designated expert is whether the  
19 Internal Revenue Service will issue a ruling favorable to the Debtor's position.  
20  
21

22 21. The Trustee does not believe that any of the above-referenced connections  
23 should be disqualifying and that the Trustee's retention and employment of A&B is in the  
24 best interest of the Debtors' estates and their creditors.  
25

26 22. The foregoing disclosures have been made based upon the review of the  
27 best information available at this time. Accordingly, the Trustee understands that A&B  
28

1 and certain of its partners, counsel and associates may have in the past represented, and  
2 may currently represent and in the future likely will represent creditors of the Debtors in  
3 connection with matters unrelated to the matters on which the Trustee seeks to employ  
4 A&B. To the extent that it is determined that any additional matters should be disclosed,  
5 A&B will supplement this Application.  
6

7 23. Based upon the Trustee's personal knowledge as well as the attached Stein  
8 Declaration, A&B is a "disinterested person" as that term is defined in Section 101(4) of  
9 the Bankruptcy Code, in that, to the best of the Trustee's knowledge, A&B, its partners,  
10 counsel, and associates:  
11

12 a. are not creditors, equity security holders, or insiders of the  
13 Debtors;  
14

15 b. are not and were not, within two years before the date of the filing  
16 of the petition, a director, officer or employee of the Debtors; and  
17

18 c. do not have an interest materially adverse to the interest of the  
19 estate or of any class of creditors or equity security holders, by reason of  
20 any direct or indirect relationship to, connection with, or interest in, the  
21 Debtors, or for any other reason.  
22

23 24. Neither the Trustee nor any member of A&B is related to the Bankruptcy  
24 Judge in these Bankruptcy Cases, the Honorable Marilyn Morgan.

25 25. Neither the Trustee nor any member of A&B is related to the United  
26 States Trustee in the region in which these bankruptcy cases are pending. Other than as  
27 set forth above, neither the Trustee nor A&B has had any connection with the United  
28

1 States Trustee for Region 17, or with the attorneys of the United States Trustee's office.

2 26. No previous application for the relief sought herein has been made to this  
3 or any other court.  
4

5 27. Notice of this Application has been given to (i) the United States Trustee  
6 for the Northern District of California, (ii) the Creditors' Committee, and (iii) the Official  
7 Service List in this case. In light of the nature of the relief requested, the Trustee submits  
8 that no further notice need be given.  
9

10 WHEREFORE, for the above-stated reasons, the Trustee respectfully requests  
11 that he be authorized to retain A&B and its partners and associates, assisted by its  
12 paralegals, as counsel to the Trustee in these Chapter 11 cases from the date of his  
13 appointment on April 17, 2007, and the Trustee respectfully requests that the Court grant  
14 such other and further relief as the Court deems just and proper.  
15

16 This 2nd day of May 2007.

17 By: /s/ Dennis J. Connolly  
18 Dennis J. Connolly  
19 Chapter 11 Trustee for the Debtors  
20  
21  
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24  
25  
26  
27  
28

Grant T. Stein, Esq.  
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 Telephone: (404) 881-7000  
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 (pro hac vice application pending)

*Proposed Attorneys for Dennis J. Connolly in His Capacity  
 as Chapter 11 Trustee for SONICblue Incorporated, et al.*

**UNITED STATES BANKRUPTCY COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION**

In re:	)	Chapter 11 Cases
	)	
SONICBLUE INCORPORATED, a	)	Case Nos.: 03-51775
Delaware corporation, DIAMOND	)	through 03-51778
MULTIMEDIA SYSTEMS, INC., a	)	
Delaware corporation, REPLAYTV,	)	Jointly Administered
INC., a Delaware corporation, and	)	
SENSORY SCIENCE CORPORATION,	)	<b>DECLARATION OF GRANT T. STEIN</b>
a Delaware corporation,	)	<b>IN SUPPORT OF APPLICATION</b>
	)	<b>FOR EMPLOYMENT OF</b>
Debtors and Debtors-in-Possession.	)	<b>ALSTON &amp; BIRD LLP AS</b>
	)	<b>COUNSEL TO DENNIS J.</b>
	)	<b>CONNOLLY, THE</b>
	)	<b>CHAPTER 11 TRUSTEE</b>
	)	
	)	Date:
	)	Time:
	)	Place: 280 South First Street
	)	San Jose, CA 95113
_____	)	Judge: Hon. Marilyn Morgan

Personally appeared before the undersigned officer, duly authorized to administer oaths in the State of Georgia, Grant T. Stein, who after being duly sworn, deposes and states as follows:



1           1. I am a partner with the law firm of Alston & Bird LLP (“A&B”) and in that  
2 capacity, I have either personal knowledge of, or I have reviewed appropriate portions of  
3 A&B’s business records or have obtained information from other attorneys at A&B, with  
4 respect to the matters set out herein. A&B maintains an office at 1201 West Peachtree  
5 Street, Atlanta, Georgia 30309-3424, and offices in Washington, D.C., Charlotte, North  
6 Carolina, Raleigh, North Carolina and New York, New York. I have read the  
7 Application for an Order Pursuant to Section 327(a) of the Bankruptcy Code Authorizing  
8 the Retention of Alston & Bird LLP as Counsel to Dennis J. Connolly, the Chapter 11  
9 Trustee (the “Application”), executed by Dennis J. Connolly, the duly appointed  
10 Chapter 11 Trustee (the “Trustee”), and submit this Declaration in support thereof.<sup>2</sup>

11           2. To the best of my knowledge, understanding and belief, A&B does not hold  
12 any disqualifying interest to the Debtors, their directors, any significant creditors or any  
13 other significant parties in interest in matters upon which the law firm is to be engaged by  
14 the Trustee. A&B and certain of its partners, counsel and associates represent creditors  
15 or equity security holders of the Debtors in connection with matters unrelated to the  
16 matters on which the Trustee seeks to employ A&B. A&B has examined its books and  
17 records with respect to its connections to creditors and other parties in interest and is  
18 continuing to do so.

19           3. A&B utilizes a number of procedures (the “Firm Procedures”) to determine its  
20 relationships, if any, to parties that may have connections to a debtor. A&B maintains  
21 records of all of its clients, the matters on which it represents its clients, and the other  
22

23  
24  
25  
26  
27  
28           <sup>2</sup> Any capitalized terms not defined herein shall have the meaning attributed to them in the Application.

1 parties which have a substantial role in such matters. In addition, A&B has inquired of  
2 its attorneys whether they have any independent (i.e., non-A&B) relationships with the  
3 Debtors, their directors, any of their significant creditors, and any other significant parties  
4 in interest. A&B has utilized the conflicts system and the Firm Procedures to determine  
5 any relationships with the referenced persons and entities.  
6

7 4. In implementing the Firm Procedures in connection the representation of the  
8 Trustee in these cases, A&B took the following actions to identify parties that may have  
9 connections to the Debtors, and A&B's relationships with such parties:  
10

11 (a) A&B compiled, from information provided by the United States Trustee  
12 and/or publicly available information, a list of interested parties and  
13 creditors (the "Interested Parties"), attached hereto as Schedule 1. The  
14 Interested Parties include the Debtors and their non-debtor subsidiaries  
15 and affiliates, creditors and certain parties in interest, including  
16 professionals identified by the Office of the United States Trustee,  
17 creditors and parties in interest shown on Exhibit "C" to the First  
18 Amended Disclosure Statement filed by the Debtors and the Official  
19 Committee of Unsecured Creditors (the "Committee"), and other parties in  
20 interest identified in that certain Memorandum Opinion dated March 26,  
21 2007.  
22

23 (b) A&B then caused the employees of A&B to compare each of the names  
24 on the Interested Parties list to the names in its master electronic database  
25 of current and former clients (the "Conflicts Database"). The Conflicts  
26  
27  
28

1 Database generally includes the name of each client of the firm, the name  
2 of each party who is or was known to be adverse to such client of the firm,  
3 the name of each party that has or had a substantial role with regard to the  
4 subject matter of A&B's retention, and the names of the A&B attorneys  
5 who are or were primarily responsible for matters for such clients. A&B  
6 also sent an email inquiry to A&B attorneys inquiring of any known  
7 connections between A&B and certain of the interested parties (including  
8 Debtor's primary bankruptcy counsel), the United States Trustee and  
9 attorneys with the Office of the United States Trustee in Region 17.  
10

- 11  
12 (c) If an Interested Party produced a match with a known party in the  
13 Conflicts Database, A&B reviewed a report for that specific party to  
14 determine whether A&B: (i) had or have in the past or is currently  
15 representing the party and/or (ii) whether the matter is active or closed.  
16

17  
18 5. Schedule 2 attached hereto identifies those Interested Parties (or their  
19 affiliates) that A&B is representing. If attorneys at A&B are currently representing the  
20 Interested Party (or its affiliate), the A&B representation is identified on Schedule 2 as  
21 "Active."  
22

23 6. A&B has the following connections with matters wholly unrelated to the  
24 Debtors and these Chapter 11 cases:

- 25 (a) A&B represents Matsushita Electric Industrial Co., Ltd. and Matsushita  
26 Electric Corporation of America in tax matters and certain intellectual  
27 property matters that are unrelated to the Debtors or their cases. I  
28

1 understand that Matsushita Kotobuki Electronic Sales of America LLC  
2 and Matsushita Kotobuki Electronics Industries are creditors that presently  
3 sit on the Committee, A&B is informed that Matsushita Kotobuki Electric  
4 Sales and Matsushita Kotobuki Electronics Industries are subsidiaries of  
5 Matsushita Electric Industrial Co., Limited. A&B is not aware of any  
6 challenge to the claims filed by the Matsushita entities.  
7

8  
9 (b) A&B represents U.S. Bank, N.A. in financings unrelated to the Debtors or  
10 their cases. I understand that U.S. Bank, N.A. is the successor indenture  
11 trustee for the Junior Notes (as defined in the Disclosure Statement). I  
12 also understand that A&B has a written conflict waiver from U.S. Bank,  
13 N.A. for this matter which is unrelated to any other work we do for U.S.  
14 Bank, N.A. U.S. Bank's legal fees to A&B were less than 1/10<sup>th</sup> of 1% of  
15 A&B's total collected legal fees for this period. A&B has a written  
16 conflict waiver from U.S. Bank that enables it to be fully adverse to U.S.  
17 Bank.  
18

19  
20 (c) Two partners of A&B's Washington, D.C. and New York offices are  
21 formerly partners with the predecessor firm to Debtors' counsel. A&B has  
22 served as counsel to parties in litigation that may have interest coincident  
23 with parties represented by Pillsbury and A&B has been adverse to  
24 Pillsbury on other matters. Since 1991, either Pillsbury or certain of its  
25 predecessor firms (including the Shaw Pittman firm) has referred 12  
26 matters to A&B. The fees for the matters aggregate approximately  
27  
28

1 \$580,000 over the past 16 years, which is less than 2/100 of 1% of the  
2 total revenues for A&B over the past 16 years.

3  
4 (d) A&B represents Houlihan, Lokey, Howard & Zukin ("HLHZ") in  
5 connection with certain fairness opinions and related issues in respect of  
6 transactions and matters wholly unrelated to the Debtors or their cases.  
7 The Trustee understands that HLHZ is a financial advisor/investment  
8 banker to the Debtors although it appears that the engagement is largely at  
9 an end by virtue of the fact that the transactions for which HLHZ had been  
10 engaged have now closed.

11  
12 (e) A&B represents the Coca-Cola Company on tax matters and property  
13 matters all in which are wholly unrelated to the Debtors or their cases.

14  
15 (f) A&B represents Wells Fargo, NA, and certain of its affiliates with respect  
16 to certain financial transactions (as an asset-based lender) in respect of  
17 transactions that are wholly unrelated to the Debtors or their cases.

18  
19 (g) A&B represents Intel Corporation on anti-trust and related matters, all  
20 unrelated to the Debtors or their bankruptcy cases.<sup>3</sup>

21 (h) Jasper Cummings, Of Counsel to A&B, was retained by Hennigan Bennett  
22 & Dorman on behalf of its client, Beecher, Ltd., in the Azabu Buildings  
23 Company, Ltd. Chapter 11 bankruptcy case pending in the District of  
24 Hawaii, Bankruptcy Case No. 05-50011, dealing with the Honolulu Hyatt  
25

26  
27 <sup>3</sup> I understand that Intel Corporation is not a creditor of the Debtors. However,  
28 Intel Corporation is a party to certain protective orders filed in these bankruptcy cases. These protective orders may cover certain information that would be relevant to the Trustee's investigations.

1 Hotel. Mr. Cummings has prepared an expert report and is to be deposed  
2 and give trial testimony concerning a federal income tax issue under the  
3 Debtor's reorganization plan. The issue on which he is a designated  
4 expert is whether the Internal Revenue Service will issue a ruling  
5 favorable to the Debtor's position.  
6

7 7. I have the following additional connections in this case beyond those  
8 connections for A&B noted above.  
9

10 a. I personally have worked on two cases with lawyers at Shaw, Pittman,  
11 Potts & Trowbridge, a predecessor to Pillsbury, Winthrop, Shaw, Pittman,  
12 former counsel to the debtor and debtor in possession in this case. One  
13 case was in 1991 and dealt with an out of court restructuring and possible  
14 bankruptcy, and a second was in 1998 and dealt with a senior secured  
15 lender's position in a real estate bankruptcy case. I also received a contact  
16 in March, 2007, from an attorney I worked with in 1998, concerning a  
17 potential new litigation matter. Upon the selection of the Trustee, I  
18 determined that it would not be appropriate for me to become involved in  
19 that matter, and never became involved in it.  
20  
21

22 b. Michael H. Goldstein, a Shareholder of Stutman, Treister & Glatt, is a  
23 member of the Board of Directors of the Association of Insolvency and  
24 Restructuring Advisors (AIRA). I am the President-Elect of that  
25 organization.  
26  
27

28 8. A&B, its partners, attorneys, and counsel, may have appeared in the past

1 and may appear in the future in matters unrelated to this case, in which the Debtors,  
2 creditors and other parties in interest may be involved. In addition, A&B, its partners,  
3 attorneys, and counsel may have represented in the past and may represent in the future,  
4 creditors of the Debtors and parties in interest in matters unrelated to these Chapter 11  
5 cases. In addition to the foregoing, some of A&B's approximately 750 attorneys may  
6 have had some personal or professional relationships with attorneys, accountants,  
7 employees, or officers of creditors of the Debtors. The undersigned does not have  
8 knowledge of any such relationship that is material nor does he know of any way in  
9 which all such relationships could be discovered. To the extent that it is determined that  
10 any additional matters should be disclosed, the undersigned will supplement this  
11 Declaration.  
12

13  
14  
15 9. I do not believe that A&B has or represents any adverse interest to the  
16 Debtors, their directors, any significant creditors or any other significant parties in that  
17 should disqualify it from serving as counsel to the Trustee in these cases. A&B is a  
18 "disinterested person" as that term is defined in Section 101(4) of the Bankruptcy Code,  
19 in that, to the best of my knowledge, A&B, its partners, counsel, and associates.  
20

- 21 (a) are not creditors, equity security holders, or insiders of the  
22 Debtors;  
23  
24 (b) are not and were not, within two years before the date of the filing  
25 of the petition, a director, officer or employee of the Debtors; and  
26  
27 (c) do not have an interest materially adverse to the interest of the  
28 estate or of any class of creditors or equity security holders, by

1 reason of any direct or indirect relationship to, connection with, or  
2 interest in, the Debtors, or for any other reason.

3  
4 10. No agreement or understanding in any form or guise exists between A&B  
5 and any other person for a division of compensation for services rendered in or in  
6 connection with these cases, and no such division of compensation prohibited by Section  
7 504 of the Bankruptcy Code will be made, except among members of A&B. A&B has  
8 not shared or agreed to share any compensation received in this case with any entity other  
9 than its partners, counsel and associates.  
10

11 11. I, and other attorneys of A&B, are members in good standing of the State  
12 Bar of Georgia as well as the State Bars of the various states where A&B attorneys  
13 practice. A&B has had substantial experience and practice before the United States  
14 Bankruptcy Courts. Further, I believe we are well qualified to represent the Trustee as its  
15 bankruptcy counsel and to advise the Trustee on corporate, bankruptcy, litigation, and  
16 other matters appropriate and incidental to this case, as may be required.  
17  
18

19 12. A&B has agreed to undertake this representation at its standard hourly  
20 rates and other usual charges, which rates and other charges are subject to periodic  
21 adjustments to reflect economic and other conditions, all of which must be in accordance  
22 with B.L.R. 9029-1, Guidelines 19-24, and 27-40. Further, with respect to travel time for  
23 which an A&B attorney is not actually working on this file, A&B will not bill for such  
24 time in accordance with by and consistent with B.L.R. 9029-1, Guideline 17. Any  
25 request for payment of these charges will be subject to approval of the Court, on notice to  
26 the United States Trustee, creditors and parties in interest.  
27  
28



1  
2 Dated: May 2, 2007

/s/ Grant T. Stein  
GRANT T. STEIN  
Georgia Bar No. 677835

**SCHEDULE 1**

3 DFX	Lee and Li
ABT TV	Levene, Neale, Bender, Rankin & Brill
Actebis Distribution	LG Electronics Inc.
Adecco Employment Services, Inc.	Lite-On Technology Corporation
Advance Service/Advance TV	Manufacturers' Service Limited
Advanced Digital Solutions International, Inc.	Marcus Smith
Alpha Electronics	Marger Johnson & McCollom
A-Max Technology Co. Ltd.	Maricopa County
American Alliance Insurance Co.	Marsh USA, Inc.
American Arbitration Association, Inc.	Maxtor Corporation
American Express Travel Related Services	McGrane, Greenfield
Amoisonic Electronics, Inc.	McNutt & Littneker
Andrew Wolfe	Metropolitan Graphics
Apple Computer	Michelle Miller
APS, Inc.	Michigan Department of Treasury
Argo Partners	Microniche Info Systems, Inc.
Audio Wizard	Micronics Computers, Inc.
Avaya Finance, Inc.	Murray & Murray
Avaya fka Lucent Technologies	Nasdaq
Avaya, Inc.	Nationwide Gourmets
AVC Corp	Naumann Hobbs Material Handling
Avia Technology	Neopost
Avocon	Nike
Baltrans Logistics Inc.	Off Site Record Management
Bankvest	Office Depot
Bari Abdul	O'Melveny & Myers
BDI Leguna Distributors	Orchid (Europe) Limited
Beautiful Enterprise Co. Ltd.	Orchid France S.A.R.L.
Bergerson Eliopoulos	Orchid Technology
Berkley Industries LLC	Orchid Technology Group
Bialson, Bergen & Schwab	Orion Advanced Marketing
Binar Graphics, Inc.	Pachulski, Stang, Ziehl, Younger & Jones
Bowne of Los Angeles	Palmetto Electronics
California Audio Labs, LLC	Pillsbury Winthrop Shaw Pittman LLP
California Franchise Tax Board	Portside Growth & Opportunity Fund Ltd.
CarrAmerica Realty, L.P.	Posh Bagel
Celestica	Preferred Packaging & Container
Central Transport International	Print, Inc.
Christie Parker & Hale	PSC
	PTI Global

CIT Communications Finance Corp.	Puglisi
City of Santa Clara	QVC, Inc.
City Video Electronics Repair	Recall Total Information MGM
Continental Promotion Group	Reigncom
Continental Resources	Reliable Richard Service Co.
Cornerstone Research	Rentokil Tropical Plant Service
Corporate Transport. 'n Tours	Replay TV, Inc.
Costello Communications	Retail Services
Dana Kane	RioPort, Inc.
Daniel Rhodes	Riverside Claims, LLC
Dash Electronics	Riverside Contracting, LLC
David Gershon	Robert Lee
DDB Worldwide	Roger Hackett
Decision One Corporation	S3 – VIA, Inc.
Densitron Europe	S3 Asia Pacific Limited
Diamond Computer Systems Japan K.K.	S3 Europe Ltd.
Diamond Multimedia Services Co., Ltd.	S3 Graphics Co., Ltd.
Diamond Multimedia Systems Hong Kong, Ltd.	S3 Graphics, Inc.
Diamond Multimedia Systems International, Inc.	S3 International
Diamond Multimedia Systems, Inc.	S3 Japan, K.K.
Digital Commerce	S3 Singapore Pte, Ltd.
DigitalCast, Inc.	S3 Ventures, Ltd.
Dolphin Capital	S3, Inc. Litigation Plaintiffs
Donald V. Biase/Tops Appliance City	Samsung Electronics America
Drinker Biddle & Reath	Samsung Electronics Co., Ltd.
DSI Technology Escrow Services	Sandisk Corporation
Eakins Open Systems	Schiff Hardin & Waite
Ed Esber	Schraith, James T.
Edward J. Brachocki	Scott Morris Enterprises
Elevator Service Company, Inc.	Sensory Science Corporation
Empeg Limited	Sharon Taylor
ENG Electronic Enterprise	Shred-it
Ernst & Young LLP	Smithfield Fiduciary LLC
E-Services Private Sub LLC	Sodexo Marriott Services
ESL, Inc.	Sonic Holdings LLC
Familycare, Inc.	Sonica3, Inc.
Federal Express	SONICblue GmbH
Fenwick & west	SONICblue Holding LLC
Fidelity Investments Institutional Operations	SONICblue Holdings (PTY), Ltd.
First Rocky Mountain Sales Inc.	SONICblue Incorporated
Folger Levin	SONICblue International Limited
Frontpath, Inc.	SONICblue Singapore Pte Ltd.
	Southeastern Sales
	Southwest Incentives

Fuller, Glenn  
GE Capital/General Electric Capital  
Gleason Associates  
Good Guys  
Go-Video Productions, Inc.  
Greenleaf Compaction  
Grey Ventures, Inc.  
GVC Corp.;  
Hain Capital  
HD Electronics  
Hennigan, Bennett & Dorman  
Hotjobs.com  
Howard, Rice  
HR Audio Video, Inc.  
HSN dba Home Shopping Network  
In-House Service Co.  
Inserv Company  
Integnology  
Intel  
Interface Analysis Associates  
Intertan Technical Services  
Ira Kaye dba Kaye & Associates  
Island Data Corporation  
James Williams  
Jeffer, Mangels & Butler  
Jeffrey Berg  
John Kovacs  
John Todd  
Joseph Kincaid/Raymond Leasing  
JP Digital Imaging Inc.  
Kaiser Foundation Health Plan, Inc.  
Kaiser Permanente  
Kenneth Potashner  
Kevin Bohren  
Kenneth Potashner  
Khahn Trading, Inc.  
Kintetsu World Express  
Korea Export Insurance Corporation  
K. O. Electronics  
Larry Kenswil  
Larson Pallet Co.

SPEA Software AG  
Splash Studios  
Squire, Sanders & Demsey  
Staples Credit Plan  
State of Michigan/  
State of Tennessee/  
Stereo & Video Repair  
Sterling Electronics  
Stutman, Triester & Glatt  
Supra Corporation  
Synnex  
Tai Tien Electronics  
Target  
Tech Data  
Tech Search  
Teletron Service  
Televentions, L.L.C.  
Tennessee Department of Revenue  
Terese Farkas  
Terry Holdt  
Texas Comptroller of Public Accounts  
The Coca-Cola Company  
The Electronics Shop  
The Interpublic Group of Companies, Inc.  
TV Data Technologies  
Tweeter Home Ent. Group  
United Microelectronic Corporation  
United Radio  
Universal Electronics  
Varta The Battery Experts  
Verisign, Inc.  
Via Technologies, Inc.  
Visions Electronics  
Walter Amaral  
Warren Communications  
Webside Story  
Wells Fargo  
Westronix  
William Morris Agency, Inc.  
Wist Office Products  
Zodiac Trading

**SCHEDULE 2**

Coca-Cola -- Corporate and tax matters unrelated to SONICblue

Houlihan, Lokey, Howard & Zukin -- Matters unrelated to SONICblue

Intel Corporation -- anti-trust and related matters unrelated to SONICblue

Matsushita Electric Industrial Co., Ltd and  
Matsushita Electric Corporation of America -- IP and tax work unrelated to SONICblue

QVC, Inc. -- Tax matters unrelated to SONICblue

U.S. Bank, N.A. -- Financing matters unrelated to SONICblue

Wells Fargo -- Finance and related matters unrelated to SONICblue

Grant T. Stein, Esq.  
 Ga. Bar No. 677835  
 ALSTON & BIRD LLP  
 1201 West Peachtree Street  
 Atlanta, GA 30309-3424  
 Telephone: (404) 881-7000  
 grant.stein@alston.com  
 (pro hac vice application pending)

*Proposed Attorneys for Dennis J. Connolly in His Capacity  
 as Chapter 11 Trustee for SONICblue Incorporated, et al.*

**UNITED STATES BANKRUPTCY COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION**

In re:	)	Chapter 11 Cases
	)	
SONICBLUE INCORPORATED, a	)	Case Nos.: 03-51775
Delaware corporation, DIAMOND	)	through 03-51778
MULTIMEDIA SYSTEMS, INC., a	)	
Delaware corporation, REPLAYTV,	)	Jointly Administered
INC., a Delaware corporation, and	)	
SENSORY SCIENCE CORPORATION,	)	<b>STATEMENT OF ATTORNEY</b>
a Delaware corporation,	)	<b>COMPENSATION PURSUANT</b>
	)	<b>TO 11 U.S.C. § 329 AND</b>
Debtors and Debtors-in-Possession.	)	<b>BANKRUPTCY RULE 2016(b)</b>
	)	
	)	Date:
	)	Time:
	)	Place: 280 South First Street
	)	San Jose, CA 95113
	)	Judge: Hon. Marilyn Morgan
	)	

Pursuant to Section 329 of the United States Bankruptcy Code (the “Bankruptcy Code”) and Rule 2016(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the undersigned, a partner of Alston & Bird LLP (“A&B”), proposed attorneys for Dennis J. Connolly, the Chapter 11 Trustee (the “Trustee”) in above-captioned Chapter 11 bankruptcy cases of SONICblue Incorporated, Diamond Multimedia Systems,

Statement of Attorney Compensation Pursuant  
 to 11 U.S.C. § 329 and Bankruptcy Rule 2016(b)  
 Case No. 03-51775

1 Inc., ReplayTV, Inc., and Sensory Science Corporation (collectively, the “Debtors”),  
2 states that, to the best of his knowledge, information and belief:

3 1. A&B is the proposed counsel for the Trustee in these cases.

4 2. The compensation agreed to be paid by the Trustee to A&B is for legal  
5 services rendered or to be rendered in contemplation of and in connection with these  
6 cases. The fees billed by A&B for services in the case will be at its standard hourly rates,  
7 and A&B will also charge for other expenses such as for computerized research, long  
8 distance charges, telecopier charges, photocopy services and the like, as limited by and  
9 consistent with B.L.R. 9029-1, Guidelines 19-24, and 27-40. With respect to travel time  
10 for which an A&B attorney is not actually working on this file, A&B will not bill for  
11 such time in accordance with B.L.R. 9029-1, Guideline 17.

12 3. The services rendered or to be rendered include the following:

- 13 a. assisting the Trustee in consultations, negotiations and all other dealings  
14 with creditors and other parties in interest concerning the administration of  
15 this case;  
16 b. preparing pleadings, conducting investigations and making court  
17 appearances incidental to the administration of the Debtors’ estates;  
18 c. advising the Trustee of his rights, duties and obligations under the  
19 Bankruptcy Code, Bankruptcy Rules, Local Rules and Orders of this  
20 Court;  
21 d. advising and assisting the Trustee with respect to litigation;  
22 e. rendering other legal advice and performing all those legal services  
23  
24  
25  
26  
27  
28

1 necessary and proper to the administration of the Debtors' estates during  
2 the pendency of these cases; and

3 f. taking any and all necessary actions in the interest of the Trustee incident  
4 to the proper representation of the Debtors' bankruptcy estates in the  
5 administration of these cases.  
6

7 g. The services rendered or to be rendered include the following:

8 4. A&B has received no money, no transfer or assignment of pledge of property  
9 that is in any way related to these cases.  
10

11 5. A&B has not shared or agreed to share with any other person, any  
12 compensation paid or to be paid except pursuant to the partnership agreement of A&B.  
13

14 This 2nd day of May 2007.

15 ALSTON & BIRD LLP

16  
17 /s/ Grant T. Stein  
18 GRANT T. STEIN  
19 Georgia Bar No. 677835  
20 1201 West Peachtree Street  
21 Atlanta, Georgia 30309-3424  
22 (404) 881-7000  
23  
24  
25  
26  
27  
28



# Exhibit

6

Entered on Docket

May 04, 2007

GLORIA L. FRANKLIN, CLERK  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

The following constitutes  
the order of the court. Signed May 04, 2007

A handwritten signature of Marilyn Morgan is written over a horizontal line.

Marilyn Morgan  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re:

**SONICBLUE INCORPORATED,  
DIAMOND MULTIMEDIA SYSTEMS,  
INC., REPLAYTV, INC., and SENSORY  
SCIENCE CORPORATION,**

Debtors.

Cases No. 03-51775, 03-51776,  
03-51777, and 03-51778-MM

Chapter 11 cases  
Jointly administered

**MEMORANDUM DECISION AND  
ORDER ON MOTION OF  
SENIOR NOTEHOLDERS FOR  
CLARIFICATION, OR IN THE  
ALTERNATIVE, RECONSIDERATION**

Let there be no doubt that the words and findings of my Memorandum Decision of March 26, 2007 were carefully selected to respond to the issues then before the court, which were whether to appoint a chapter 11 trustee pursuant to § 1104, whether to convert the case to chapter 7, and whether to disqualify counsel for the debtor. The findings made in support or denial of those motions must be understood in context. After considering the argument of counsel and the record before me, the motion for clarification, or in the alternative, reconsideration by Portside Growth & Opportunity Fund Ltd., Smithfield Fiduciary LLC, and Citadel Equity Fund Ltd. (previously described as the "senior debtholders," "senior bondholders" or "senior noteholders," but hereinafter "senior noteholders") is denied as explained below.

1 **1. Noting a Distinction Between a Right to Payment and a Claim for Compensation, the Joint**  
 2 **Venture Agreement Expressly Grants VIA a Claim for Compensation Upon Breach.**

3 Article 5.6(a) of the joint venture agreement expressly provides that both VIA and the joint  
 4 venture are entitled to be compensated for damages resulting from loss of the Intel license. The  
 5 preamble to Article 5.6(a) reads in pertinent part that: “If JV is Enjoined from Utilizing the Intel  
 6 License . . . , then the following liquidated damages shall apply *to compensate JV and VIA for any and*  
 7 *all losses they may suffer as a result thereof.* . . . (Emphasis added.) The senior noteholders  
 8 conveniently omitted in their motion the phrase “to compensate JV and VIA for any and all losses they  
 9 may suffer as a result thereof . . . ,” replacing it with ellipses in a manner that is misleading to the reader.

10 Article 5.6(a) makes a distinction between the right to be compensated for losses suffered and  
 11 the right to receive a distribution of damages for those losses. While it provides that damages are  
 12 *payable* to the joint venture, it states unambiguously that VIA, as well as the joint venture, is entitled  
 13 to compensation for losses resulting from an inability to use the Intel cross-license. As noted, the  
 14 distinction is meaningful because the determination whether VIA is entitled to priority turns on whether  
 15 it has a claim against SONICblue. More importantly, whether VIA has a claim may affect the amount  
 16 of the distributions to the senior noteholders absent subordination by VIA.

17 The term “claim” is broadly defined in § 101(5), is not limited to rights to payment, but includes  
 18 rights to an equitable remedy for breach of performance. In fact, VIA asserted a claim in this case.  
 19 Modification of the decision at the senior noteholders’ request for purposes of clarification on this point  
 20 is unwarranted.

21  
 22 **2. The Senior Noteholders Appear Not to Have Disclosed Significant Information to the**  
 23 **Committee Notwithstanding its Unusually High Level of Involvement.**

24 The senior noteholders object to the characterization that they inserted themselves into the VIA  
 25 litigation, that they had a hidden agenda, and that their counsel, Bruce Bennett, operated in the  
 26 shadows. However, it was not apparent until SONICblue’s litigation counsel, Albert J. Boro, Jr., filed  
 27 his declaration on March 5, 2007 that the senior noteholders were involved at the highest levels of  
 28 strategy development and settlement negotiations in the VIA litigation. Bennett was consulted with

1 respect to proposed settlement terms even when committee counsel was not contacted. Yet, the senior  
2 noteholders were not a party to the VIA adversary proceeding and did not file their own objections to  
3 the claims of VIA and S3 Graphics. While standing to participate is not at issue, it is unusual for non-  
4 parties to be involved to the degree that the senior noteholders were.

5 At the disclosure statement hearing held January 23, 2007, it became apparent that the senior  
6 noteholders had not revealed to committee counsel, Ron Bender, that the VIA settlement contained a  
7 waiver by VIA of senior indebtedness status or that the waiver would directly benefit the senior  
8 noteholders, who were members of the committee. Based on the concerns of a taint raised by the claims  
9 traders, I directed Bender to conduct an investigation of the settlement negotiations and how the waiver  
10 provision was inserted into the VIA settlement. The following exchange highlights the problem:

11 The Court: So you're saying that even at the time that the agreement was approved,  
12 the Committee was not aware of this provision?

13 Mr. Bender: Not aware, not focused, or any of the like. Now I don't want to mislead  
14 the Court. It's my responsibility to read a document. The document does  
say that Via agrees that its claim is not senior indebtedness, but I would  
have no reason to focus on it being an important point.

15 Bennett, as counsel for the senior noteholders, attended the January 23 hearing by telephone.  
16 Thereafter, Bender filed a twenty-three page Preliminary Status Report on February 12, 2007 regarding  
17 his investigation. From reviewing that report, it does not appear that Bennett ever volunteered relevant  
18 information despite the ongoing investigation and Bender's active efforts to pursue answers. At a time  
19 when Bender was seeking transparency and making inquiries of other parties as to their motivations,  
20 Bennett and his clients did not come forward.

21 When further facts came to light on February 15, 2007 prompting the motions to appoint a  
22 chapter 11 trustee, to convert the case, and to disqualify debtor's general bankruptcy counsel, I set these  
23 motions for hearing on March 19, 2007. Bennett himself acknowledged on March 19 that the hearing  
24 was the first time that he had personally addressed the court in this case. Even then, however, Bennett  
25 did not reveal his role in securing the waiver provision that arguably benefitted his clients' interests at  
26 the expense of the unsecured creditor class. More significantly, Bennett apparently never disclosed to  
27 the committee or Bender the senior noteholders' potential conflict in connection with the subordination  
28 provisions of the senior indenture, of which Bennett was acutely aware. That debtor's counsel may have

1 been aware of the subordination provision in the senior indenture and the waiver of senior status in the  
2 VIA settlement is of no moment for purposes of this motion for clarification. The appearance of  
3 concealment by the senior noteholders and Bennett was one of the grounds for the appointment of a  
4 trustee. For the reasons stated, the motion for clarification or reconsideration on this point is also  
5 denied.

6 At the hearing on this motion, much emphasis was placed on who knew what when, posturing  
7 for the benefit of the trustee, and putting spin on a bad situation. However, it is incumbent on all  
8 interested parties not to lose sight of the big issues necessary to move this case forward: what to do  
9 about the fact that there was no meaningful disclosure of the effect of VIA's waiver of priority, and how  
10 to revise the disclosure statement and plan in order to provide a reasonably prompt distribution to  
11 creditors. There will be time later to focus attention on the conduct of the attorneys and fiduciaries  
12 involved.

13 Good cause appearing, IT IS SO ORDERED.

14  
15 \*\*\* END OF ORDER \*\*\*  
16  
17  
18  
19  
20  
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22  
23  
24  
25  
26  
27  
28

Case No. 03-51775-MM

**SERVICE LIST**

CRAIG A BARBAROSH  
PILLSBURY WINTHROP LLP  
650 TOWN CENTER DRIVE 7<sup>TH</sup> FLOOR  
COSTA MESA CA 92626-7122

BRUCE BENNETT  
HENNIGAN BENNETT & DORMAN LLP  
865 SOUTH FIGUEROA ST SUITE 2900  
LOS ANGELES CA 90017

RON BENDER  
LEVENE NEALE BENDER RANKIN &  
BRILL LLP  
1801 AVENUE OF THE STARS STE 1120  
LOS ANGELES CA 90067

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OFFICE OF THE UNITED STATES  
TRUSTEE  
280 SOUTH FIRST ST SUITE 268  
SAN JOSE CA 95113-0002

K JOHN SHAFFER  
STUTMAN TRIESTER & GLATT PC  
1901 AVENUE OF THE STARS 12<sup>TH</sup> FL  
LOS ANGELES CA 90067

BERNARD BURK  
HOWARD RICE NEMEROVSKI CANADY  
FALK & RABKIN  
3 EMBARCADERO CENTER 7<sup>TH</sup> FLOOR  
SAN FRANCISCO CA 94111-4024

DENNIS J CONNOLLY  
ALSTON& BIRD LLP  
1201 WEST PEACHTREE STREET  
ATLANTA GA 30309

GRANT STEIN  
ALSTON& BIRD LLP  
1201 WEST PEACHTREE STREET  
ATLANTA GA 30309

CECILY A DUMAS  
FRIEDMAN DUMAS & SPRINGWATER  
LLP  
150 SPEAR STREET SUITE 1600  
SAN FRANCISCO CA 94105

# **Exhibit**

**7**

Entered on Docket

May 09, 2007

GLORIA L. FRANKLIN, CLERK  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA



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grant.stein@alston.com  
(pro hac vice application pending)

The following constitutes  
the order of the court. Signed May 08, 2007

  
Marilyn Morgan  
U.S. Bankruptcy Judge

*Attorneys for Dennis J. Connolly in His Capacity  
as Chapter 11 Trustee for SONICblue Incorporated, et al.*

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

In re:	)	Chapter 11 Cases
	)	
SONICBLUE INCORPORATED, a	)	Case Nos.: 03-51775
Delaware corporation, DIAMOND	)	through 03-51778
MULTIMEDIA SYSTEMS, INC., a	)	
Delaware corporation, REPLAYTV,	)	Jointly Administered
INC., a Delaware corporation, and	)	
SENSORY SCIENCE CORPORATION,	)	<b>INTERIM ORDER</b>
a Delaware corporation,	)	<b>AUTHORIZING THE</b>
	)	<b>RETENTION OF</b>
	)	<b>ALSTON &amp; BIRD LLP AS</b>
Debtors and Debtors-in-Possession.	)	<b>COUNSEL TO DENNIS J.</b>
	)	<b>CONNOLLY, THE</b>
	)	<b>CHAPTER 11 TRUSTEE</b>
	)	<b>AND SETTING FINAL</b>
	)	<b>HEARING</b>
	)	
	)	Date: June 14, 2007
	)	Time: 1:30 p.m.
	)	Place: 280 South First Street
	)	San Jose, CA 95113
	)	Judge: Hon. Marilyn Morgan

The Court has considered the application (the "Application") of Dennis J. Connolly, the Chapter 11 Trustee (the "Trustee") in the above-captioned Chapter 11 bankruptcy cases of SONICblue Incorporated, and its three operating subsidiaries,

Statement of Attorney Compensation Pursuant  
to 11 U.S.C. § 329 and Bankruptcy Rule 2016(b)  
Case No. 03-51775



1 Diamond Multimedia Systems, Inc., ReplayTV, Inc., and Sensory Science Corporation  
2 (collectively, the "Debtors"), requesting the authority to employ Alston & Bird LLP  
3 ("A&B") to represent the Trustee in these cases filed pursuant to Chapter 11 of the  
4 United States Bankruptcy Code (the "Bankruptcy Code"). This Court has jurisdiction  
5 over the Application and finds that notice of the Application is adequate, and that no  
6 further notice is necessary.  
7

8       Upon review of the Application and the related submissions, the Court is satisfied  
9 on a preliminary basis that A&B does not hold any disqualifying interest to the Debtors,  
10 those who acted on behalf of the Debtors, any significant creditors or any other  
11 significant parties in interest in matters upon which the law firm is to be engaged by the  
12 Trustee. The Court is further satisfied that A&B is disinterested within the meaning of  
13 Section 101(14) of the Bankruptcy Code, and that the Trustee's employment of A&B as  
14 counsel is in the best interests of the Debtors' estates. Accordingly it is hereby:  
15  
16

17       ORDERED, that the Application is granted on an interim basis; and it is further  
18

19       ORDERED, that the Trustee is authorized to retain A&B, its partners, associates  
20 and paralegals on an interim basis as of April 17, 2007, the date of the Trustee's  
21 appointment, as his attorneys in all matters relating to the performance of his duties as the  
22 Chapter 11 Trustee in these cases as set forth in the Application; and it is further  
23

24       ORDERED, that A&B shall be compensated in accordance with the procedures  
25 set forth in 11 U.S.C. §§ 330 and 331 and applicable Bankruptcy Rules, and any other  
26 order of this Court; and it is further  
27  
28

1 ORDERED, that a final hearing on A&B's retention as counsel for the Trustee  
2 shall be held on June 14, 2007, at 1:30 p.m.; and it is further

3 ORDERED, that objections, if any, to A&B's retention as counsel for the Trustee  
4 shall be filed with the Clerk and served (i) on the Trustee, through A&B as his counsel, at  
5 the following address: Grant Stein, Esq., Alston & Bird LLP, 1201 West Peachtree Street,  
6 Atlanta, GA 30309; (ii) on the Creditors Committee through its counsel at the following  
7 address: Ron Bender, Esq., Levene, Neale, Bender, Rankin & Brill LLP, 10250  
8 Constellation Blvd., Suite 1700, Los Angeles, CA 90067; and (iii) on the United States  
9 Trustee at the following address: Nanette Dumas, Esq., Office of the United States  
10 Trustee, 280 South First Street, Suite 268, San Jose, CA 95113. Filing and service of  
11 objections shall be accomplished on or before May 31, 2007, and any such objection shall  
12 be heard and considered at the hearing to be held on June 14, 2007; and it is further

13 ORDERED, that if no objection is filed to A&B's retention as counsel for the  
14 Trustee, the Court may enter a Final Order approving same without any further notice or  
15 hearing; and it is further

16 ORDERED, that within five (5) days, A&B is directed to serve a copy of the  
17 Application, the Declaration and this Order on the Special Notice List; and it is further,

18 ORDERED, that A&B shall file a certificate of service with the Court evidencing  
19 compliance with the notice provisions of this Order.

20 \*\* END OF ORDER \*\*  
21  
22  
23  
24  
25  
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27  
28

COURT SERVICE LIST

Nanette Dumas  
Office of the US Trustee  
280 South First Street, Ste. 268  
San Jose, CA 95113

Ron Bender, Esq.  
Levene, Neale, Bender, Rankin & Brill LLP  
10250 Constellation Blvd., Suite 1700  
Los Angeles, CA 90067

Cecily A. Dumas  
Friedman Dumas & Springwater LLP  
150 Spear Street, Suite 1600  
San Francisco, CA 94105

Grant. T. Stein  
Alston & Bird LLP  
1201 West Peachtree Street  
Atlanta, GA 30309-3424

# **Exhibit**

# **8**

FRIEDMAN DUMAS & SPRINGWATER LLP  
CECILY A. DUMAS (S.B. NO. 111449)  
150 Spear Street, Suite 1600  
San Francisco, CA 94105  
Telephone Number: (415) 834-3800  
Facsimile Number: (415) 834-1044

ALSTON & BIRD LLP  
GRANT T. STEIN  
1201 West Peachtree Street  
Atlanta, GA 30309  
Telephone Number: (404) 881-7000  
Facsimile Number: (404) 881-7777  
(*pro hac vice* application pending)

*Attorneys for Dennis J. Connolly in His Capacity as  
Chapter 11 Trustee for SONICblue Incorporated, et al.*

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

In re

SONICBLUE INCORPORATED,  
a Delaware corporation, DIAMOND  
MULTIMEDIA SYSTEMS, INC.,  
a Delaware corporation, REPLAYTV,  
INC., a Delaware corporation, and  
SENSORY SCIENCE CORPORATION,  
a Delaware corporation,

Debtors.

Case Nos. 03-51775 through 03-51778

Chapter 11 Cases

Jointly Administered

NOTICE OF HEARING ON TRUSTEE'S  
EMPLOYMENT APPLICATIONS

Date: June 14, 2007  
Time: 1:30 p.m.  
Place: 280 South First Street  
San Jose, CA 95113  
Judge: Hon. Marilyn Morgan

TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND ITS COUNSEL  
OF RECORD, ALL PERSONS HAVING FILED AND SERVED REQUESTS FOR  
NOTICE IN THIS CHAPTER 11 CASE, AND OTHER INTERESTED PARTIES:

PLEASE TAKE NOTICE that on June 14, 2007 at 1:30 p.m., or as soon  
thereafter as the matter may be heard, Dennis J. Connolly, the Chapter 11 Trustee (the  
"Trustee") in the above-captioned Chapter 11 bankruptcy cases of SONICblue Incorporated,  
and its three operating subsidiaries, Diamond Multimedia Systems, Inc., ReplayTV, Inc., and

1 Sensory Science Corporation (collectively, the “Debtors”), will seek orders, pursuant to  
2 section 327(a) of the Bankruptcy Code, authorizing the retention of Alston & Bird LLP  
3 (“A&B”) as counsel to the Trustee, and the retention of Friedman Dumas & Springwater LLP  
4 (“FDS”) as local counsel to the Trustee.

5 PLEASE TAKE FURTHER NOTICE THAT, pursuant to Bankruptcy Local  
6 Rule 9014-1(c)(1) of the United States Bankruptcy Court for the Northern District of  
7 California and the Interim Orders signed by the Court on May 8, 2007 authorizing the  
8 retention of counsel and setting a final hearing, **any objection to the requested relief must**  
9 **be filed and served no later than March 31, 2007** (i) on the Trustee, through A&B as his  
10 counsel, at the following address: Grant Stein, Esq., Alston & Bird LLP, 1201 West Peachtree  
11 Street, Atlanta, GA 30309; (ii) on the Trustee, through FDS as his counsel, at the following  
12 address: Cecily A. Dumas, Esq., Friedman Dumas & Springwater LLP, 150 Spear Street,  
13 Suite 1600, San Francisco, CA 94105; (iii) on the Creditors Committee through its counsel at  
14 the following address: Ron Bender, Esq., Levene, Neale, Bender, Rankin & Brill LLP, 10250  
15 Constellation Blvd., Suite 1700, Los Angeles, CA 90067; and (iv) on the United States  
16 Trustee at the following address: Nanette Dumas, Esq., Office of the United States Trustee,  
17 280 South First Street, Suite 268, San Jose, CA 95113. Any objection must be accompanied  
18 by any declarations or memorandum of law the party objecting wishes to present in support of  
19 its position. If no objection is filed, the Court may enter a Final Order granting the request  
20 without any further notice or hearing.

21 The Trustee’s application is based upon this notice, the A&B application, the  
22 supporting declaration of Grant T. Stein, the A&B statement of attorney compensation, the  
23 FDS application, the supporting declaration of Cecily A. Dumas, the FDS statement of  
24 attorney compensation, and the Interim Orders signed by the Court on May 8, 2007. Such  
25 pleadings are being served, by regular mail, on the Official Committee of Unsecured

26 //

27 //

28 //

1 Creditors and its counsel of record, all persons having filed and served requests for notice in  
2 this chapter 11 case, and other interested parties.

3 Dated: May 9, 2007

FRIEDMAN DUMAS & SPRINGWATER LLP

4  
5 By: /s/ Cecily A. Dumas  
6 Cecily A. Dumas  
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# Exhibit

# 9



UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
(SAN JOSE DIVISION)

In re:

SONIC BLUE, INC.,

Case No. 03-51775-MM  
Thru 03-51778-MM  
(Jointly Administered)

Chapter 11

San Jose, California  
May 4, 2007  
10:20 a.m.

Debtor.

TRANSCRIPT OF PROCEEDINGS

- a) MOTION FOR CLARIFICATION, OR IN THE ALTERNATIVE,  
FOR LEAVE TO FILE A MOTION FOR RECONSIDERATION  
BY PORTSIDE GROWTH & OPPORTUNITY FUND, SMITHFIELD  
FIDUCIARY, LLC, AND CITADEL EQUITY FUND, LTD.  
b) AMENDED OPPOSITION BY SONIC BLUE CLAIMS, LLC

BEFORE THE HONORABLE MARILYN MORGAN  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Creditors'  
Committee:

LEVENE, NEALE, BENDER, RANKIN  
& BRILL, LLP  
BY: RON BENDER, ESQ.  
10250 Constellation Boulevard.  
Suite 1700  
Los Angeles, California 90067  
  
(APPEARING TELEPHONICALLY)

1 APPEARANCES (CONTINUED):

2

3

4 For Pillsbury: HOWARD, RICE, NEMEROVSKI, CANADY,  
5 FALK & RABKIN, PC  
6 BY: BERNARD BURK, ESQ.  
7 Three Embarcadero Center, 7<sup>th</sup> Floor  
8 San Francisco, California 94111

6

7

8 Proposed Counsel for Trustee: FRIEDMAN, DUMAS & SPRINGWATER, LLP  
9 BY CECILY A. DUMAS, ESQ.  
10 150 Spear Street, Suite 1600  
11 San Francisco, California 94105

10

-and-

11

12 ALSTON & BIRD, LLP  
13 BY: GRANT T. STEIN, ESQ.  
14 One Atlantic Center  
15 1201 West Peachtree Street  
16 Atlanta, Georgia 30309

14

15

16 For the U.S. Trustee: OFFICE OF THE U.S. TRUSTEE  
17 BY: NANETTE DUMAS, ESQ.  
18 280 South First Street #268  
19 San Jose, California 95113

18

19

20 For SB Claims: STUTMAN, TREISTER & GLATT  
21 BY: K. JOHN SHAFFER, ESQ.  
22 1901 Avenue of the Stars,  
23 12<sup>th</sup> Floor  
24 Los Angeles, California 90067

22

23 For the senior note holders: HENNIGAN, BENNETT & DORMAN  
24 BY: BRUCE BENNETT, ESQ.  
25 865 South Figueroa Street,  
Suite 2900  
Los Angeles, California 90017

25

1 APPEARANCES (CONTINUED):

2

3 Also Present: DENNIS CONNOLLY, Trustee

4

5 Court Recorder: LUPE BARRON  
UNITED STATES BANKRUPTCY COURT  
6 280 South First Street  
7 San Jose, California 95113

8

9 Transcription Service: Jo McCall  
Electronic Court  
10 Recording/Transcribing  
2868 E. Clifton Court  
11 Gilbert, Arizona 85297  
Telephone: (480) 361-3790

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1 P R O C E E D I N G S

2 May 4, 2007

10:20 a.m.

3 ---oOo---

4 THE CLERK: Item 11, Sonic Blue, Incorporated.

5 THE COURT: Nobody is eager to come forward to  
6 make appearances.

7 (Laughter.)

8 MR. BENNETT: Good morning, Your Honor, Bruce  
9 Bennett of Hennigan, Bennett & Dorman on behalf of the note  
10 holders.

11 THE COURT: Good morning.

12 MR. BURK: Good morning, Your Honor, Bernard Burk  
13 from Howard Rice for Pillsbury Winthrop.

14 THE COURT: Mr. Burk.

15 MS. CECILY DUMAS: Good morning, Your Honor,  
16 Cecily Dumas, Friedman, Dumas & Springwater. We're the  
17 proposed local counsel for the Chapter 11 Trustee.

18 THE COURT: Good morning.

19 MS. CECILY DUMAS: Good morning. Also here with  
20 me -- and if it please the Court, I'd like to introduce Mr.  
21 Grant Stein of the firm of Alston & Bird in Atlanta, the  
22 trustee's proposed lead counsel. We filed Mr. Stein's pro  
23 hac application. We have not yet received an order.

24 MR. STEIN: Good morning, Your Honor, Grant Stein,  
25 associated in the case.

1 THE COURT: Okay. Welcome to our court, Mr.  
2 Stein.

3 MR. STEIN: Thank you, Your Honor.

4 MR. SHAFFER: Good morning, Your Honor, John  
5 Shaffer of Stutman, Treister & Glatt for SB Claims.

6 THE COURT: Good morning.

7 MS. NANETTE DUMAS: Good morning, Your Honor,  
8 Nanette Dumas for the U.S. Trustee.

9 MS. CECILY DUMAS: My apologies, also in the court  
10 is Mr. Dennis Connolly, the Chapter 11 Trustee.

11 MR. CONNOLLY: Good morning, Your Honor. It's  
12 nice to be here.

13 THE COURT: Good morning, Mr. Connolly, and  
14 welcome to our court to you.

15 MR. CONNOLLY: Thank you very much. I appreciate  
16 it.

17 THE COURT: We have a telephonic appearance I  
18 understand.

19 MR. BENDER: Yes, Your Honor, good morning. This  
20 is Ron Bender, Levene, Neale, Bender, Rankin and Brill  
21 appearing on behalf of the Creditors' Committee.

22 THE COURT: Okay. Good morning, Mr. Bender.

23 Mr. Bennett, this is your motion.

24 MR. BENNETT: Yes, it is, Your Honor.

25 The matter has been fairly extensively briefed,

1 and so I will be -- I will probably be very brief in my  
2 oral remarks.

3 First of all, I want to deal with the pleading  
4 that was styled as the response to the reply, actually that  
5 was filed by Pillsbury, which was of course filed out of  
6 order and out of time. But first, I think to help put  
7 things in context, I've prepared a time line. I'd like to  
8 hand a couple of copies up to the Court and to counsel and  
9 to the trustee and certainly to his counsel.

10 And, Your Honor, the reason I did this is  
11 because, what I gather the principal purpose of the  
12 response to the reply was, was to set forth a time line of  
13 events based upon the record as it sits today. Now in  
14 context, we all know that this is kind of at the beginning  
15 of the process rather than the end of the process, but if  
16 people are going to talk about what the record is as of  
17 today, they might as well get it right. And what is shown  
18 on the time line, in addition to excerpts from the Burrough  
19 (Phonetic) declaration, which are accurately shown in the  
20 right-hand column, is whether or not the particular event  
21 managed to make it into SB Claims' time line.

22 And I only really want to make two comments on  
23 this. First of all, the very first box, August 11<sup>th</sup>, 2005,  
24 the first box is of course where the Creditors Committee  
25 tells everyone involved in these negotiations what their

1 requirements for a settlement are, and according to Mr.  
2 Burrough's declaration, they were willing to live with any  
3 settlement of the VS/S3G Claims of 25 million dollars or  
4 less.

5           This happens at the beginning of the process, not  
6 at the end of the process, and the essential allegation as  
7 I understand it that made its way in some respects into  
8 Your Honor's order on the trustee motion -- or opinion on  
9 the trustee motion -- is that the note holders used their  
10 position on the Committee to accomplish something. That  
11 allegation relates to events that occurred in September of  
12 2005, and the allegation is that somehow the note holders  
13 were controlling the Committee and making it do something  
14 that the Committee didn't want to do.

15           But the fact is -- at least the record today,  
16 which is the record we're of course dealing with, is that  
17 the Committee had signed off on a settlement at vastly  
18 different terms than were acceptable to the note holders,  
19 and they had done it long before the period began when the  
20 assertion is that the note holders, rather than speaking  
21 for themselves, which they're of course always entitled to  
22 do, that they were somehow using the Committee mechanism to  
23 help themselves out.

24           The second is a bit more problematic, and I turn  
25 Your Honor's attention to the second page and the second

1 box after April and early May 2006, and you'll see the  
2 sentence that starts, "Our reason." Are you with me, Your  
3 Honor?

4 THE COURT: Yes.

5 MR. BENNETT: Okay. To fully understand this  
6 point, you actually have to have this response to the reply  
7 in front of you, and the response to the reply that I'm  
8 referring to would be on page 7. I don't know if Your  
9 Honor has it with you. I'll read it slowly so that you can  
10 follow this. Here's exactly what the pleading filed by  
11 Mr. Shaffer says:

12 According to Mr. Burrough, (quote, open bracket,  
13 little o - closed bracket n-e.), "so one reason for doing  
14 so was that the parties had agreed that defendant's claim  
15 was not senior."

16 Your Honor, they've misquoted the declaration.  
17 Now ordinarily, one might think that the substitution of  
18 the word "one" for the word "our" was an innocent  
19 typographical error and we would leave it at that, but what  
20 Mr. Shaffer does with the misquote is quite remarkable. It  
21 is the launching board for still another accusation.  
22 Here's the accusation. It follows the sentence where the  
23 misquote is, open paren:

24 "(We are left to wonder what the, quote 'other  
25 reasons', closed quote, for adding this language



1                   were."

2       Well, there is no quote, "other reasons," closed quote,  
3       anywhere in this Mr. Burrough's declaration, and there's no  
4       suggestion that there were other reasons anywhere in that  
5       declaration. So we not only have a misquote at the front  
6       end of this, we have an effort to launch still another  
7       unfounded allegation based upon the misquote.

8                   I'm not going to get into the rest of the merits  
9       of the motion in detail, unless I have to on reply, because  
10      I think we're dealing with a core issue here that's more  
11      important than anything else. And the core issue is where  
12      we are today and where we're going in this case. We filed  
13      the motion mainly because we truly do not believe that the  
14      Court intended to make findings on any of the points that  
15      we point to in the motion or to otherwise preordain the  
16      results of the investigation that the trustee hasn't even  
17      started to perform yet.

18                  If something doesn't change with the order,  
19      what's going to happen is the trustee is going to start  
20      this investigation with parties asserting that certain  
21      issues have already been decided or that his investigation  
22      has to be performed in such a way to reach particular  
23      results. And I don't think that's what this Court  
24      intended. What I think this Court intended, what I think  
25      this process needs is a trustee's investigation that starts

1 absolutely on a clean slate.

2           If there's no difference among anyone in this  
3 courtroom on this point, the motion should be granted. And  
4 we should be starting with an order and opinion appointing  
5 a trustee that does not preordain any results, that is not  
6 based upon perceptions of allegations as opposed to actual  
7 facts. If the parties disagree with that and believe that  
8 the record already shows something, well then we ought to  
9 have findings that actually comport with what the record  
10 already shows. And for reasons that I think we've pointed  
11 out very clearly in our papers, right now the Court's  
12 opinion is not consonant with what the record assembled  
13 today actually shows.

14           I'm available to answer any questions you might  
15 have.

16           THE COURT: I understand your views. Is there  
17 anyone else who wishes to be heard?

18           MR. SHAFFER: Your Honor, if I may be, just for a  
19 moment.

20           Your Honor, Mr. Bennett is absolutely correct. I  
21 did misread that and misquote it, and I am tremendously  
22 embarrassed by that. That's inexcusable, and I apologize.  
23 I apologize to Mr. Bennett. I apologize to everyone. I'm  
24 very sorry. As the Court knows, there's been an awful lot  
25 of paper in this thing, and things have been moving very

1 fast, and this is one thing where my eyes may have deceived  
2 my mind.

3           Nonetheless, Your Honor, and with that and --  
4 that is embarrassing. Your Honor, there are, however, some  
5 essential issues that we do need to address here. Your  
6 Honor, there's been statements by both Pillsbury and by the  
7 note holders that this Court essentially didn't find  
8 anything. This Court appointed a Chapter 11 trustee, which  
9 is a rather unusual event, and the statute requires this  
10 Court to make findings in support of what this Court did.  
11 So to say that this Court didn't make any findings doesn't  
12 make any sense at all. Your Honor made plenty of findings.

13           How, without question, there are many, many, many  
14 more issues that need to be explored in the case, and that  
15 is why you've ordered the appointment of a trustee, and  
16 that's why the U.S. Trustee's office appointed such a  
17 competent trustee to do that. But that doesn't mean that  
18 the Court hasn't already made some findings. This Court  
19 disqualified the law firm and appointed a Chapter 11  
20 trustee, and I think that if someone took this up on  
21 appeal, the Appellate Court would be very surprised to find  
22 out that Your Honor made no findings in doing that.

23           But, Your Honor, the essential element here and  
24 what seems to be being missed even by the note holders'  
25 time line, is what this Court found, which was that there

1 was an appearance that the note holders used their position  
2 on the Committee to advance their own interests without  
3 revealing their hidden agenda. That is the part of the  
4 sentences that the note holders would like to have removed,  
5 and I would like to present to the Court, if I may, the  
6 January 23<sup>rd</sup>, 2007 transcript, which is already in the  
7 record. And, Your Honor, since I don't have my own copy  
8 with me, I'll have to do this with memory and hopefully  
9 I'll do a little bit better than I did on this pleading.

10 Your Honor, I was very surprised and troubled as  
11 I read the note holders' reply brief, particularly as I got  
12 to the last page where it seemed it questioned the  
13 declaration that Mr. Bender had filed with regard to what  
14 the Committee knew about the subordination issue. On the  
15 last page of the note holders' reply, it says:

16 "The Bender declaration does not say that, quote,  
17 'Committee counsel was not informed at the time  
18 that the proposed settlement would have the  
19 effect of releasing the bondholders from any  
20 obligation they might have to Via on account of  
21 the senior debt in this issue.' "

22 And it goes on to say after some citations:

23 "In fact Mr. Bender does not state that he was  
24 unaware of the issue. Rather, he carefully  
25 states that, quote, 'it was only through an

1 objection to the disclosure statement,' closed  
2 quote, that Levene Neale, quote, 'first learned  
3 of any possible controversy.' "

4 "Any possible controversy" being highlighted here,  
5 involving the senior indebtedness issue related to Via in  
6 the senior note indenture.

7 Your Honor, in fact, at the January 23<sup>rd</sup> hearing,  
8 which I missed because I had the pleasure of having surgery  
9 that day on my ankle, you will recall, Your Honor, that  
10 that is when this issue first came up before the Court  
11 based on the pleadings of Riverside and Argyle (Phonetic).  
12 And Your Honor will also remember that that hearing ended  
13 with you authorizing Levene Neale to go forward with an  
14 investigation in lieu of an examiner.

15 And you did that, Your Honor, based upon, I  
16 believe -- but Your Honor will be the only one that can  
17 tell us what you really intended and so I will obviously  
18 defer to you -- but I believe you did that in part upon the  
19 representations that were made to you by Mr. Bender, which  
20 are entirely consistent, I may add, with Mr. Bender's  
21 declaration.

22 On page 11 of the transcript in front of you, on  
23 lines 4 and 5, Mr. Bender stated to the Court, again  
24 consistent with his declaration, there was never any  
25 discussion at any time about this idea of senior

1 indebtedness. And you wanted to clarify that, I believe,  
2 because that was an important point to you, so later on in  
3 that same page, on line 19, the Court says:

4 "Basically you weren't aware of the issue."

5 And Mr. Bender said,

6 "Correct. Correct."

7 And there was some more discussion. I think on page 12,  
8 you tried to ask the question again, but it's hard to tell  
9 from the transcript, but on page 13 at line 4, you said:

10 "So, you're saying that even at the time that the  
11 agreement was approved, the Committee was not  
12 aware of this provision."

13 The Committee, not Mr. Bender, the Committee, and the  
14 answer was by Mr. Bender:

15 "Not aware or focused or any of the like."

16 Again, consistent with Mr. Bender's declaration.

17 Later on in the hearing, Your Honor -- Mr.  
18 Bennett appeared by phone, counsel for the note holders --  
19 on page 31, line 9:

20 "First of all, Mr. Bender, so far as he has told  
21 you the story told it to you exactly accurately,  
22 as I understand it."

23 And I couldn't hear everything Your Honor said, and I don't  
24 have a problem if people want to take discovery to verify  
25 what was represented is in fact true, and then Mr. Bennett

1 did go on to add some other details but eventually ending  
2 with the statement on page 34, line 4:

3 "But that is the whole story, and I think that's  
4 rounding out the parts that Mr. Bender might not  
5 have known, and we ought to have all the  
6 disclosure in the world about this, but there's  
7 just nothing here."

8 Your Honor, based upon that transcript, and look -- and the  
9 trustee is going to investigate that, there will be  
10 depositions; there will be final findings -- but based upon  
11 that transcript, this Court could reasonably conclude at  
12 least the appearance -- the appearance -- that the note  
13 holders used their position on the Committee to forward  
14 their hidden agenda. We know based upon Mr. Burrough's  
15 declaration that the note holders contacted Mr. Burrough  
16 saying that no matter how that claim is allocated, it can't  
17 be senior indebtedness under the indenture. We won't  
18 support it, and the note holders in their own reply brief  
19 told us that they insisted that that be the case.

20 And indeed as you saw in my time line, after that  
21 phone call, within a couple of days, some additional  
22 language was added. It didn't specifically say the senior  
23 indebtedness issue, and we can -- the trustee I'm sure will  
24 ask why it was vague, the addition, and yet it did seem to  
25 cover the point.

1 But very quickly after that, Your Honor, the  
2 Committee, of which the note holders controlled three of  
3 the five active seats at the time, approved this deal. And  
4 the question, Your Honor, the question that the trustee  
5 will have to investigate is, if in fact there was  
6 disclosure to the rest of the Committee by the three note  
7 holders who had asked for and got this additional privilege  
8 in the agreement, was there disclosure to the rest of the  
9 Committee when they voted on this or otherwise approved  
10 this transaction? Was there disclosure to Mr. Bender; was  
11 there disclosure to the Committee members?

12 And Your Honor has not made a final finding on  
13 that, and I'm not saying Your Honor has, and I don't think  
14 Your Honor thinks Your Honor has either. But what Your  
15 Honor has said is there is the appearance that this might  
16 have occurred. And I believe that indeed there is the  
17 appearance, Your Honor, and that the trustee will get to  
18 the truth.

19 Thank you, Your Honor, that's all I have to add  
20 unless there's anything else you need from me.

21 THE COURT: No, thank you, Mr. Shaffer.

22 Is there anyone else who wishes to be heard  
23 before we hear again from Mr. Bennett? Ms. Dumas?

24 MS. NANETTE DUMAS: Just very, very briefly, Your  
25 Honor. I concur that the Court did not make any



1 affirmative findings regarding this whole issue of whether  
2 or not the senior note holders used their position to their  
3 own advantage. That remains to be seen, and I think just  
4 the whole fact that we're having this hearing today shows  
5 how badly a trustee was needed in this case, and I'm so  
6 glad we've got one appointed, and it's going to move  
7 forward.

8 But I did not understand the Court's opinion to  
9 be making factual findings on that specific issue, so I  
10 don't think that any clarification is needed, because I  
11 think the Court said that the note holders may have used  
12 their position, and the Court couched it all in  
13 hypothetical language, yet at the same time, there's enough  
14 in the record to show that that is one fair interpretation  
15 of the facts that are known at this point. However,  
16 obviously further investigation is needed to get at the  
17 truth.

18 Thank you, Your Honor.

19 THE COURT: Thank you, Ms. Dumas.

20 Mr. Burk, do you wish to be heard?

21 MR. BURK: Other than to observe, Your Honor, at  
22 this point that everyone seems to be saying that they don't  
23 understand the Court to have conclusively determined  
24 factually any of the issues on which it raised concerns in  
25 its opinion, so that we have a rare and beautiful moment of

1 harmony in this case, I have nothing to add.

2 MR. BENNETT: Your Honor --

3 THE COURT: I'm not sure that we are at harmony?

4 (Laughter.)

5 Thank you. Mr. Bennett?

6 MR. BENNETT: Well, first of all, let's make sure  
7 we're on the right place in the map. I don't think the  
8 note holders said in any of their papers, and I don't think  
9 I said here today that there were no findings made. If you  
10 go back and remember where we were, we had motions filed by  
11 the U.S. Trustee. We also had a motion filed by SB Claims.  
12 That one was denied.

13 The U.S. Trustee's motions were not grounded on  
14 any of these things. They weren't grounded on what the  
15 investment agreement said; they weren't grounded on note  
16 holder conduct; they were grounded on some fairly  
17 straightforward technical arguments about disclosures to  
18 this Court by lawyers before it.

19 So all of this stuff wasn't in the motions that  
20 this Court actually heard and granted, and they are  
21 extensions of the facts that the pleadings that this Court  
22 considered and relied upon.

23 THE COURT: There's a great deal of posturing  
24 going on.

25 MR. BENNETT: I suppose that's right, Your Honor,

1 and I frankly think we do need a posture-free zone, so  
2 let's talk about some other things that were just said.  
3 Everyone wants to focus on Mr. Bender, but Mr. Bender  
4 wasn't there. Mr. Burrough's declaration says that Ann  
5 Wells and Ann Kerns (Phonetic) were on the phone calls  
6 where this was discussed. There are other lawyers noted in  
7 our opposition from the Levene, Neale, Bender firm who were  
8 there. There's another one that we managed to leave out  
9 that I stumbled on when I was preparing for argument,  
10 Monica Kim (Phonetic) who filed pleadings relating to this  
11 matter, and it turns out -- I think I'm correct -- in that  
12 Ann Wells is no longer with the Levene, Neale, Bender firm.  
13 I think Monica Kim still is.

14           So this idea that this somehow happened in  
15 secret, and because Mr. Bender didn't know, nobody knew,  
16 when their lawyers were at all the relevant meetings and  
17 billing, as we've indicated in our papers, more than a  
18 hundred thousand dollars, is a very slender reed to support  
19 any finding at all about what Committee counsel knew. I'm  
20 sure we're going to find Ms. Wells; I'm sure we're going to  
21 find Ms. Kim; I'm sure we're going to find that fee  
22 application, and we're going to know what Committee counsel  
23 knew.

24           It defies belief, frankly, that if SB Claims  
25 figured all of this out, if O'Melveny & Myers figure it

1 out, if Pillsbury Madison -- I'm sorry, Pillsbury Winthrop  
2 now -- figured it out, and my firm figured it out, I can't  
3 imagine how it can be that the Levene Neale firm, with all  
4 of the time and all of the energy spent in this case,  
5 didn't figure everything out. If that's what they say at  
6 the end of this process, I suppose we'll have to figure out  
7 what that means. It doesn't mean the note holders did  
8 anything wrong.

9 I am very happy that Mr. Shaffer has modified the  
10 rhetoric, and now we're talking about an appearance as  
11 opposed to the reality of any wrongful conduct. Your Honor  
12 will note that's a considerable change on their part, and  
13 it is welcome. He knows he can't sustain the former, and  
14 he's struggling to still sustain something.

15 Your Honor shouldn't be swept up in this. You've  
16 appointed a very qualified trustee who's going to conduct  
17 an investigation and look at everything. He should not  
18 have before him targets that he's supposed to hit. He  
19 should have a clean slate.

20 I think that's enough for now. I think we do  
21 need a clean slate, particularly on these points, which  
22 were not raised by the U.S. Trustee in the motions that  
23 were granted at all.

24 Thank you, Your Honor.

25 THE COURT: Is there anyone else who wishes to be

1 heard?

2           You all will note that I am a fan of Abraham  
3 Lincoln, and Abraham Lincoln always chose his words very  
4 carefully. I think particularly in this situation, it's  
5 incumbent on me to choose my words very carefully. For  
6 that reason, I intend to issue a written ruling.

7           Thank you.

8           ALL COUNSEL: Thank you, Your Honor.

9           (Whereupon, the proceedings are concluded at 11:44  
10 a.m.)

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CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a correct transcript from the digital sound recording of the proceedings in the above-entitled matter.

DATED: May 19, 2007

By: /s/ Jo McCall